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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82739; File No. SR-BatsBZX-2017-72]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the Innovator S&P 500 15% Shield Strategy ETF Series, Innovator S&P 500 -5% to -35% Shield Strategy ETF Series, Innovator S&P 500 Enhance and 10% Shield Strategy ETF Series, and Innovator S&P 500 Ultra Strategy ETF Series Under Rule 14.11(i)

February 20, 2018.

I. Introduction

On November 7, 2017, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares (“Shares”) of the Innovator S&P 500 15% Shield Strategy ETF Series (“Shield Funds”), Innovator S&P 500 -5% to -35% Shield Strategy ETF Series (“Ultra Shield Funds”), Innovator S&P 500 Enhance and 10% Shield Strategy ETF Series (“Enhance and Shield Funds”), and Innovator S&P 500 Ultra Strategy ETF Series (“Ultra Funds,” and together with the Shield Funds, Ultra Shield Funds, and Enhance and Shield Funds, the “Funds”) under BZX Rule 14.11(i). The proposed rule change was published for comment in the Federal

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Register on November 22, 2017.⁴ On December 21, 2017, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to February 20, 2018.⁵ The Commission received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act to determine whether to disapprove the proposed rule change.

II. Description of the Proposed Rule Change⁶

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. In total, the Exchange is proposing to list and trade Shares of up to twelve monthly series of each of the Funds. The Shares would be offered by Innovator ETFs Trust (“Trust”), a Delaware statutory trust.⁷ The investment adviser to the Funds is Innovator Capital Management LLC (“Adviser”), and the sub-adviser to the Funds is Milliman Financial Risk Management LLC (“Sub-Adviser”).

A. Innovator S&P 500 15% Shield Strategy ETF Series

The Shield Funds are actively managed funds that seek to outperform the Cboe S&P 500 15% Buffer Protect Index Series (“Shield Index”) before expenses are taken into account. The

⁴ See Securities Exchange Act Release No. 82097 (November 16, 2017), 82 FR 55689 (“Notice”).

⁵ See Securities Exchange Act Release No. 82387, 82 FR 61613 (December 28, 2017).

⁶ A more detailed description of the Trust, the Funds, and the Shares, as well as the availability of price information values and other information regarding the Funds’ portfolio holdings, is included in the Registration Statement (defined below). See *infra* note 7.

⁷ The Trust is registered with the Commission as an investment company and has filed a registration statement with the Commission on Form N-1A (File Nos. 333-146827 and 811-22135) (“Registration Statement”) under the Securities Act of 1933 (15 U.S.C. 77a), dated October 19, 2017. The description of the operation of the Funds and the Shares herein is based, in part, on the Registration Statement.

Shield Index is designed to provide investment returns that, over a period of approximately one year, match those of the S&P 500 Index, up to a maximized annual return (“Shield Cap Level”),⁸ while guarding against a decline in the S&P 500 Index for the first 15%. Specifically, the Shield Index is designed to provide the following results during the outcome period:

- If the S&P 500 Index appreciates over the outcome period: The Shield Index is designed to provide a total return that matches the percentage increase of the S&P 500 Index, up to the Shield Cap Level;
- If the S&P 500 Index decreases over the outcome period by 15% or less: The Shield Index is designed to provide a total return of zero; and
- If the S&P 500 Index depreciates over the outcome period by greater than 15%: The Shield Index is designed to provide a total return loss that is 15% less than the percentage loss on the S&P 500 Index with a maximum loss of approximately 85%.⁹

The Shield Index is designed to produce these outcomes by including theoretically “purchased” and “written” FLExible EXchange Options (“FLEX Options”) that, when layered upon each other, are designed to buffer against losses of the S&P 500 Index and cap the level of possible gains.

Under Normal Market Conditions,¹⁰ each Shield Fund would attempt to achieve its investment objective by taking positions that provide performance exposure substantially similar

⁸ The Exchange states that the Shield Cap Level would be determined with respect to each Shield Fund on the inception date of the Shield Fund and at the beginning of each outcome period. See Notice, supra note 4, 82 FR at 55691.

⁹ The Exchange states that the Shield Funds would not offer any protection against declines in the S&P 500 Index exceeding 15% on an annualized basis. See id. at 55691. Shareholders would bear all S&P 500 Index losses exceeding 15% on a one-to-one basis. See id.

¹⁰ As defined in Rule 14.11(i)(3)(E), the term “Normal Market Conditions” includes, but is

to the exposure provided by components of the Shield Index.¹¹ Each Shield Fund would invest primarily in the FLEX Options included in the Shield Index or standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or exchange traded funds (“ETFs”) that track the S&P 500 Index.¹² Any FLEX Options written by a Shield Fund that create an obligation to sell or buy an asset would be offset with a position in FLEX Options purchased by the Shield Fund to create the right to buy or sell the same asset such that the Shield Fund would always be in a net long position. As the FLEX Options mature at the end of each outcome period, they would be replaced annually to ensure that investments made by the Shield Fund in a given month during the current year buffer against negative returns of the S&P 500 Index up to pre-determined levels in that same month of the following year.

B. Innovator S&P 500 -5% to -35% Shield Strategy ETF Series

The Ultra Shield Funds are actively managed funds that seek to provide total returns that exceed that of the Cboe S&P 500 30% (-5% to -35%) Buffer Protect Index Series (“Ultra Shield Index”), before expenses are taken into account. The Ultra Shield Index is designed to provide investment returns that, over a period of approximately one year, match those of the S&P 500 Index, up to a maximized annual return (“Ultra Shield Cap Level”),¹³ while guarding against a

not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

¹¹ The Shield Funds are not index tracking funds and are not required to invest in all components of the Shield Index. See Notice, supra note 4, 82 FR at 55691, n.10

¹² The FLEX Options owned by each of the Shield Funds would have the same terms (i.e., same strike price and expiration) for all investors of a Shield Fund within an outcome period. See id. at 55691.

¹³ The Ultra Shield Cap Level would be determined with respect to each Ultra Shield Fund on the inception date of the Ultra Shield Fund and at the beginning of each outcome

decline in the S&P 500 Index of between 5% and 35%. Specifically, the Ultra Shield Index is designed to produce the following results during outcome period:

- If the S&P 500 Index appreciates over the outcome period: The Ultra Shield Index is designed to provide a total return that matches the percentage increase of the S&P 500 Index, up to the Ultra Shield Cap Level;
- If the S&P 500 Index decreases over the outcome period by 5% or less: The Ultra Shield Index is designed to provide a total return loss that is equal to the percentage loss on the S&P 500 Index;
- If the S&P 500 Index decreases over the outcome period by 5%-35%: The Ultra Shield Index is designed to provide a total return loss of 5%; and
- If the S&P 500 Index decreases over the outcome period by more than 35%: The Ultra Shield Index is designed to provide a total return loss that is 30% less than the percentage loss on the S&P 500 Index with a maximum loss of approximately 70%.¹⁴

The Ultra Shield Index is designed to produce these outcomes by including theoretically “purchased” and “written” FLEX Options that, when layered upon each other, are designed to buffer against losses of the S&P 500 Index.

Under Normal Market Conditions, each Ultra Shield Fund would attempt to achieve its investment objective by taking positions that provide performance exposure substantially similar to the exposure provided by components of the Ultra Shield Index.¹⁵ Each Ultra Shield Fund

period. See id. at 55692.

¹⁴ The Exchange states that the Ultra Shield Funds would not offer any protection against declines in the S&P 500 Index exceeding 35% on an annualized basis. See id. Shareholders would bear all S&P 500 Index losses exceeding 35% on a one-to-one basis. See id.

¹⁵ The Exchange states that the Ultra Shield Funds are not index tracking funds and are not

would invest primarily in the FLEX Options included in the Ultra Shield Index or standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.¹⁶ Any FLEX Options written by an Ultra Shield Fund that create an obligation to sell or buy an asset would be offset with a position in FLEX Options purchased by the Ultra Shield Fund to create the right to buy or sell the same asset such that the Ultra Shield Fund would always be in a net long position. As the FLEX Options mature at the end of each outcome period, they would be replaced annually to ensure that investments made in a given month during the current year buffer against negative returns of the S&P 500 Index up to pre-determined levels in that same month of the following year.

C. Innovator S&P 500 Enhance and 10% Shield Strategy ETF Series

The Enhance and Shield Funds are actively managed funds that would seek to provide investment returns during the outcome period that exceed the gains of the S&P 500 Index, up to a maximized annual return (“Enhance and Shield Cap Level”),¹⁷ while guarding against a decline in the S&P 500 Index of the first 10%.¹⁸ Pursuant to the Enhance and Shield Strategy, each Enhance and Shield Fund would seek to produce the following outcomes for shareholders holding its shares during the outcome period:

- If the S&P 500 Index appreciates over the outcome period: the Enhance and Shield

Fund would seek to provide shareholders with a total return that exceeds that of the

required to invest in all components of the Ultra Shield Index. See id. at 55692, n.11.

¹⁶ The Exchange states that the FLEX Options owned by each of the Ultra Shield Funds would have the same terms (i.e., same strike price and expiration) for all investors of an Ultra Shield Fund within an outcome period. See id. at 55692.

¹⁷ The Enhance and Shield Cap Level would be determined with respect to each Enhance and Shield Fund on the inception date of the Enhance and Shield Fund and at the beginning of each outcome period. See id. at 55693.

¹⁸ Unlike the Shield Funds and Ultra Shield Funds, the Enhance and Shield Funds would not utilize benchmark indexes.

S&P 500 Index, up to and including the Enhance and Shield Cap Level;

- If the S&P 500 Index depreciates over the outcome period by 10% or less: the Enhance and Shield Fund would seek to provide a total return of zero;
- If the S&P 500 Index decreases over the outcome period by more than 10%: the Enhance and Shield Fund would seek to provide a total return loss that is 10% less than the percentage loss on the S&P 500 Index with a maximum loss of approximately 90%.

The portfolio managers of the Enhance and Shield Funds would seek to produce those results by investing primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.¹⁹ The portfolio managers would purchase and write FLEX Options that, when layered upon each other, are designed to buffer against losses of the S&P 500 Index or cap the level of possible gains. Any FLEX Options written that create an obligation to sell or buy an asset would be offset with a position in FLEX Options purchased by the Enhance and Shield Fund to create the right to buy or sell the same asset such that the Enhance and Shield Fund would always be in a net long position. As the FLEX Options mature at the end of each outcome period, they would be replaced annually to ensure that investments made in a given month during the current year buffer against negative returns of the S&P 500 Index up to pre-determined levels in that same month of the following year.

D. Innovator S&P 500 Ultra Strategy ETF Series

The Ultra Funds are actively managed funds that would seek to provide during the

¹⁹ The FLEX Options owned by each of the Enhance and Shield Funds would have the same terms (i.e., same strike price and expiration) for all investors of an Enhance and Shield Fund within an outcome period. See Notice, supra note 4, 82 FR at 55693.

outcome period total returns that exceed those of the S&P 500 Index, up to a maximized annual return (“Ultra Cap Level”).²⁰ Each Ultra Fund would seek to produce the following results for shareholders that hold its shares during the outcome period:

- If the S&P 500 Index appreciates over the outcome period: The Ultra Fund would seek to provide shareholders with a total return that exceeds that of the S&P 500 Index, up to the Ultra Cap Level; and
- If the S&P 500 Index decreases over the outcome period: The Ultra Fund would seek to provide a total return loss that is equal to the percentage loss of the S&P 500 Index.

The portfolio managers of the Ultra Funds would seek to produce those results by investing primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index. The portfolio managers would purchase and write FLEX Options that, when layered upon each other, are designed to exceed the gains of the S&P 500 Index, subject to the Ultra Cap Level. Any FLEX Options that written by the Ultra Fund that create an obligation to sell or buy an asset would be offset with a position in FLEX Options purchased by the Ultra Fund to create the right to buy or sell the same asset such that the Ultra Fund would always be in a net long position. As the FLEX Options mature at the end of each outcome period, they would be replaced.

E. Investment Methodology for the Funds

As mentioned above, under Normal Market Conditions, each Fund would seek to achieve its respective investment objective by investing primarily in U.S. exchange-listed FLEX Options on the S&P 500 Index. Each of the Funds might invest its net assets (in the aggregate) in other

²⁰ The Exchange states that the Ultra Cap Level would be determined with respect to each Ultra Fund on inception date of the Ultra Fund and at the beginning of each outcome period. See Notice, supra note 4, 82 FR at 55693. Similar to the Enhance and Shield Funds, the Ultra Funds would not utilize benchmark indexes.

investments which the Adviser or Sub-Adviser believes would help each Fund meet its investment objective and that would be disclosed at the end of each trading day (“Other Assets”).²¹

III. Proceedings to Determine Whether to Disapprove SR-BatsBZX-2017-72 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act²² to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,²³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal’s consistency with Section 6(b)(5) of

²¹ Other Assets include only cash or cash equivalents, as defined in BZX Rule 14.11(i)(4)(C)(iii), and traditional U.S. exchange-traded options contracts that reference either the S&P 500 Index or ETFs that track the S&P 500 Index. As defined in BZX Rule 14.11(i)(4)(C)(iii), cash equivalents include short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

²² 15 U.S.C. 78s(b)(2)(B).

²³ Id.

the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.²⁴

Under the proposal, the defined outcome strategies for each Fund are designed to participate in market gains and losses within pre-determined ranges over a specified period. Specifically, these outcomes are predicated on the Shares being bought at the beginning and sold at the end of the designated outcome period. The Commission notes that market participants may buy and sell Shares of the Funds at any time. Accordingly, with respect to the performance of the Shares at any time other than the commencement of the applicable outcome period, the Commission seeks commenters' views on the sufficiency of the information provided in the proposed rule change to support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Exchange Act.

IV. Procedure: Request for Written Comments

Interested persons are invited to submit written views, data, and arguments concerning the foregoing, including whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁵

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by **[INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BatsBZX-2017-72 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BatsBZX-2017-72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsBZX-2017-72 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Rebuttal comments should be submitted by **[INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Eduardo A. Aleman,
Assistant Secretary.

²⁶ 17 CFR 200.30-3(a)(57).

